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authority since that time. And when, some years since, we ventured the opinion, that Chief Justice SHAW had no superior upon either side of the Atlantic, as a wise judge and learned jurist, we rather hoped, than expected, a recognition of the same truth in Westminster Hall. And we have alluded to the fact here, more because it shows the value of the Massachusetts Reports, as a body of law, and of this Digest, as affording ready access to its stores, than for any other reason. We do not intend to imply that European fame is any sure guaranty of greatness or learning. We are too far advanced towards the outer goal of life, and have seen too many changes in our day, to feel that such European indorsement alone is any sure guaranty of truth or justice, or of abiding value to the profession. It may be cheaply obtained, or it may be the result of the irresistible force of life-long labor and unbending principle, united with great natural ability, as in the case of Chief Justice SHAW.

I. F. R.

REPORTS OF CASES IN LAW AND EQUITY, DETERMINED IN THE SUPREME COURT OF THE STATE OF IOWA. By THOMAS F. WITHROW, Reporter. VOL. V., being Vol. XIII. of the Series. Des Moines: Published by the Reporter. 1863.

We have had occasion on the appearance of former volumes of these Reports, to speak of the careful and painstaking manner in which they are prepared and published. Mr. Withrow seems determined, contrary to the common maxim, and to what we fear is the too common practice, to maintain his well-earned character for industry and faithfulness, even in small particulars of detail, and after his reputation in that respect is too well established to suffer materially by occasional departures from it. That is certainly a very desirable course in law-book making, where so much of the value depends upon full and faithful work in the author, in order to save needless labor and perplexity in those who use the books.

We have looked into most of the cases in this volume, which were decided in June and December, 1862, and we have felt surprise at the large proportion of important questions determined, and the great carefulness and thoroughness with which the cases are prepared and argued by counsel, and the general adherence to principles apparent in the judgments. We have no doubt the bar have great reason to thank Mr. Withrow, for the compact and unmutilated form in which their briefs are generally preserved in the reports; but it is evident they must have done their part faithfully, to enable the Reporter to present them in so becoming attire.

In *Fanning vs. Stimpson*, the question of express and implied covenants for rent in leases is carefully examined, and finally determined in a very satisfactory manner. In *Karney vs. Paisley*, in an action of slander, the plaintiff was permitted to prove the pecuniary condition of the defendant in aggravation of damages, which, although sanctioned by good authority, is somewhat questionable, perhaps, in principle.

In *Samuels vs. Griffith*, it seems to be supposed that the rule of examination of witnesses in Court, requiring the examiner to direct the attention of the witness to the matter of contradiction between his statements out of Court and upon the stand, will apply to the case of contradiction between two depositions of the same witness in the same case. We should hesitate in regard to this. We believe the more general view is, that the rule has no application to the case of a witness giving his deposition out of Court. The party may not know of his having made such contradictory statements, or he may not in fact make them, until after the deposition is taken.

In *Cochran vs. Miller*, it is said that in actions against surgeons for malpractice, the jury may be allowed to give vindictive or punitive damages, upon evidence showing gross negligence. We question the wisdom of the rule allowing juries to give exemplary and vindictive damages in any case, unless restrained within the just limits of the Levitical Law, of adding one-fifth to the actual damages where the defendant acted wilfully; but we should seriously and especially object to allowing juries upon such excitable cases as those for malpractice in surgery, to give damages of any kind, beyond the injury, unless the defendant acted in bad faith. We would esteem it coming nearer the justice, and what should be the law of these cases, to adopt the rule recently laid down in the Court of King's Bench, Montreal, that the medical man was justified in treating his patients according to any well-accepted medical authority, and was not responsible for consequences, if, in so doing, he acted in good faith and according to his best judgment and ability.

The case of *Keenan vs. The Mutual Insurance Co.* is a valuable one, and adopts the true rule in saying, that the assessment and collection of any part of the premium note, operates as a waiver of any violation of the conditions of the policy known to the company to have been previously committed.

We had marked many other cases as worthy of special notice, but we can only name *The State of Iowa, ex relatione Burlington and Missouri Railroad Co., vs. The County of Wapello*, where it was held, contrary to

the former decisions of the same Court, that the Legislature had no power to authorize a municipal corporation (town, city, or county), to become subscribers to the stock of a railway corporation. This case is discussed with great ability, both by the Court and the counsel, and occupies nearly forty pages, which precluded its publication in this magazine, although furnished us in season; and while we believe that the decision will be regarded by capitalists as unjust and impolitic, we feel compelled to say, that in our humble judgment, it is the only view fairly reconcilable with principle.

I. F. R.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT AND COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY. By ANDREW DUTCHER, Esq., Reporter. Vol. 5. Trenton. 1863.

With this volume, which is the fifth by the present Reporter, we have the commencement of a new title by which the Reports are proposed to be known hereafter, as New Jersey Law Reports, of which the present will be Vol. 29. We sincerely hope that this attempt to establish uniformity of citation may be more successful than has been the case in our own State; for though the title of Pennsylvania State Reports is backed by the authority of an Act of Assembly, yet it is rarely used by the profession, who cling tenaciously to the old style of citation by the Reporter's name, notwithstanding the manifest advantages of the new title.

The high character of both the bench and bar of New Jersey has always given its Reports a value outside of the State itself; and this is especially the case when the work of reporting is so faithfully done as by Mr. Dutcher. The present volume, creditable for its mechanical execution, as well as for its higher merits, will be found to contain many cases of interest and value to the profession in general, among which may be especially mentioned *King vs. Paterson and Hudson River Railroad Co.*, on the title of stockholders to dividends after they are declared, and the duties of directors in declaring dividends; *The State vs. Jersey City*, on municipal legislation concerning railroad tracks in the streets and the speed, &c., of trains in city limits; *Voorhees vs. Jones*, on secret agreements among partners as to non-liability and non-participation in profits; *Paullin vs. Kaighn*, on contribution and subrogation between co-sureties; and the elaborate case of *Duncan, Sherman & Co. vs. Gilbert*, both in the Supreme Court and the Court of Errors and Appeals, upon accommodation notes.

J. T. M.